

## **PACIFIC SCIENTIFIC REVIEW GROUP**

**A Regional Advisory Group to the National Marine Fisheries Service**

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The Pacific Scientific Review Group (PSRG) received the Federal Register Notice - 40888 *Federal Register* / Vol. 68, No. 131 / Wednesday, July 9, 2003 / Proposed Rules, regarding the Zero Mortality Rate Goal ZMRG), under the Marine Mammal Protection Act of 1972, and is providing our comments for your consideration. To evaluate progress toward this goal, NMFS is promulgating regulations to identify what levels of incidental mortality and serious injury would satisfy the goal of insignificant levels approaching a zero rate.

First, we should like to note that the Pacific SRG has been urging the NMFS to officially define ZMRG for four years with little response. The current rush to do so now appears to come only in response to litigation and has left little time to arrange for joint or individual meetings of the SRGs to discuss these options with scientists from the NMFS. The recurring "management by lawsuit" operational style adopted by the NMFS does not lend itself to well-reviewed scientific decisions.

Option 1 defines ZMRG as 10% of PBR, the familiar guideline that is currently used by the NMFS and the SRGs. The Federal Register notice notes that one potential drawback is that it can "lead to overly conservative levels of protection for certain endangered species, whose PBR levels are already set at biologically insignificant levels." In the SRG's discussion, it was pointed out that the CA/OR shark/swordfish drift net fishery requested a section 101(a)(5)(E) permit in 2000 to authorize the take of sperm, humpback, and fin whales, and stellar sea lions. NMFS took a stock-by-stock approach in its review of this request, allowing for the consideration of other population parameters. NMFS determined that for these stocks, the level of incidental mortality in the drift net fishery would not cause more than a 10% increase in the time for recovery, was therefore having a "negligible impact" on the stocks, and issued a 101 (a)(5)(E) permit to the fishery. Essentially, in reaching this "negligible impact" finding, NMFS allowed takes up to 100% of PBR for those species with a 0.1 recovery factor.

With the caveat that the current guidelines for negligible impact described above are in place, all the participating SRG members could support or accept Option 1.

Option 2 defines ZMRG as the level of mortality that would not delay recovery of a population by more than 10%. The main drawbacks of this approach are the difficulties in explaining the concept, the perception problems in gaining support for the definition, and the difficulty in reconciling this definition with section 101(a)(5)(E) of the MMPA.

With the caveat that this definition could be made consistent with the negligible impact determination of section 101(a)(5)(E), virtually all of the SRG members could support or accept Option 2.

Option 3 adopts the 0.1% of  $N_{min}$  definition currently used in the Agreement for the International Conservation of Dolphins Program that manages dolphin populations in the eastern tropical Pacific. This definition is a simplified version of Option 1, as it would be applied for depleted stocks. Its simplicity is both an advantage and a drawback: the simplicity of the definition also restricts flexibility to deal with stocks that are either endangered or above OSP.

Most of the participating SRG members opposed this definition, citing its lack of flexibility. Despite the advantage of making US management policy consistent with an international agreement, it was thought more important that the definition be internally consistent within the MMPA.

We hope these comments prove useful to you in your determination of the ZMRG definition.

Sincerely yours,



Michael Scott  
Chairman, Pacific Scientific Review Group